IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.975 OF 1997

IN

WRIT PETITION NO.407 OF 1995

...

M/s.Phoenix Mills Ltd. ...Appellant

v/s.

Ramchandra G. Dalvi & Ors. ...Respondents

...

Mrs.Meena N. Doshi for the Appellant.

None for the Respondents.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 17TH JULY, 2007

P.C.:

1. By this Appeal the Appellant challenges the order

passed by the learned single Judge dated 25-6-1997 in Writ Petition No.407 of 1995. By that order the learned single Judge has restored the order dated 24-1-1994 passed by the 5th Labour Court. The 5th Labour Court by that order had directed payment of gratuity to the Respondent on the footing that there was no break in his service and the Respondent/employee was in continuous service of the Appellant.

2. So far as the amount that has been directed to be paid is concerned, it is only Rs.28,992.50.

3. We have heard the learned Counsel appearing for the Appellant. According to the learned Counsel there was break in service of the Respondent/employee. He was in the employment till 1982. During the strike period he abandoned his employment. He was given fresh employment in the year 1985. It is submitted that while the employee was in the service pursuant to the fresh employment given in the year 1985, he was paid the amount of gratuity to which he was entitled for his service rendered upto 1982, and therefore, according to the learned Counsel it is clear from the record that

there was break in the service of the Respondent from 1982 to 1985, and therefore he was not entitled to payment of the amount mentioned as gratuity.

4. Perusal of the order of the learned single Judge shows that the learned single Judge has held that the employee has entered into witness-box and has stated that he was given appointment in 1985 with continuity in service. On behalf of the Appellant, however, no evidence was led to show that while giving employment in the year 1985 continuity of service was not given and that there was break in service. The learned single Judge, therefore, on appreciation of evidence on record has held that the 5th Labour Court correctly computed the amount of gratuity to which the Respondent/employee was entitled. In view of the fact that the amount is very small and also the fact that the finding has been recorded by the learned single Judge on the basis of material available on record, in our opinion, no interference in the order is called for. Appeal is, therefore, disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)